

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 14-922 JB

GERALD ARCHULETA,

Defendant.

UNOPPOSED MOTION TO CONTINUE FEBRUARY 10, 2015 SENTENCING HEARING

Defendant, GERALD ARCHULETA, by and through his attorney, Todd Hotchkiss, hereby moves this Court, without opposition from opposing counsel, to enter an order continuing the February 10, 2015 sentencing hearing for approximately two weeks.

As grounds, counsel states as follows:

1. Sentencing is presently set for February 10, 2015. (Doc.61)
This is the second sentencing date for MR. ARCHULETA.

2. MR. ARCHULETA on October 24, 2014 pleaded guilty to counts 1-5 of the indictment to conspiracy to commit mail fraud and separate counts of mail fraud in violation of 18 U.S.C. §§ 1349 and 1341. The plea agreement was pursuant to Fed. R. Crim. P. 11(c)(1)(C) to a sentencing range of 87-108 months and restitution in the amount of \$734,123.73.

3. MR. ARCHULETA has been released on conditions of release on May 9, 2014 (Doc.27), and remains released pending sentencing. MR. ARCHULETA lives with his common-law wife and their son in Ojo Caliente, New Mexico. Counsel is not aware of any alleged violations of his conditions of release. Opposing counsel has agreed that MR. ARCHULETA be allowed to voluntarily surrender at the Bureau of Prisons designated facility after sentencing.

4. MR. ARCHULETA pleaded guilty on October 24, 2014, and the presentence report (PSR) interview occurred on November 5, 2014. The PSR was disclosed and released to counsel on January 9, 2015, just 18 days before the sentencing date. Counsel mailed a copy of the PSR to MR. ARCHULETA, and has attempted to make arrangements with MR. ARCHULETA to go over the PSR with him. Counsel made an appointment for January 16, 2015 and had to reschedule for 8:00 a.m. on Monday, January 19, 2015, otherwise a holiday, and MR. ARCHULETA showed up with the flu. Counsel told MR. ARCHULETA to go home, and counsel and MR. ARCHULETA spoke over the telephone on January 20, 2015 and discussed the PSR.

5. Counsel submitted extensive informal objections to the presentence report, most of which pertained to the characterization of MR. ARCHULETA's involvement in the conspiracy with codefendant Jasonn Gonzales and the consequent application of the United States Sentencing Guidelines (USSG) to MR. ARCHULETA. Counsel submitted

those informal objections on January 26, 2015.

6. During the middle of the afternoon on February 2, 2015, United States Probation responded to those informal objections, maintaining its position on all objections except for one factual objection.

7. On the morning of February 6, 2015, undersigned counsel filed extensive formal objections to the presentence report, all but one of which pertained to the characterization of MR. ARCHULETA's involvement in the conspiracy with codefendant Jasonn Gonzales and the consequent application of the USSG to MR. ARCHULETA.

8. Because of the extensive nature of the objections, the need for the Court to consider the application of the USSG to MR. ARCHULETA, because of the Court's need to resolve the objections to consider whether to accept the Fed. R. Crim. P. 11(c)(1)(C) plea agreement and involved sentencing range and restitution, and because of the short time frame involved before the presently scheduled February 10, 2015 sentencing hearing, Counsel requests another short continuance of the sentencing hearing for adequate consideration by this Court, the parties, and United States Probation.

9. Therefore, for the foregoing reasons, good cause exists for this request for a continuance of the February 10, 2015 sentencing date for approximately least two weeks. For purposes of considering rescheduling the matter, Assistant United States Attorney Tara Neda

has communicated that she is unavailable from February 17-18, 2015. Counsel previously represented that Ms. Neda and undersigned counsel were set to proceed to trial on a trailing docket beginning February 23, 2015 in the matter of United States of America v. Matthew and Brandi Channon, United States District Court for the District of New Mexico Criminal No. 13-966 JH. In the meantime, the United States filed a superseding indictment changing the charges against Brandi Channon, undersigned counsel's client. Undersigned counsel filed an unopposed motion to continue that trial setting for 60 days, and counsel reasonably expects that motion to be granted in light of the Court in that case vacating the call of the calendar on the February 23 trial setting. Also for consideration of rescheduling the matter, undersigned counsel has a pretrial hearing scheduled for February 23, 2015 at 10:30 a.m. in the matter of State of New Mexico v. Michael Fox, Second Judicial District Court No. D-0202-CR-2011-03661.

10. Opposing counsel, AUSA Tara Neda, previously indicated she was not available on February 6, 2015. Counsel attempted to contact her via email and did not receive a response. Counsel reasonably believes Ms. Neda would not oppose this motion, particularly given the prevailing circumstances, that MR. ARCHULETA has complied with his conditions of release, and Ms. Neda has previously indicated no opposition to MR. ARCHULETA after sentencing voluntarily

surrendering at the BOP designated facility.

WHEREFORE, Defendant, GERALD ARCHULETA, respectfully requests this Court to grant this motion and enter an order continuing the February 10, 2015 sentencing hearing to a later date approximately two weeks after February 10, 2015.

Respectfully submitted,

/s/ Todd Hotchkiss

TODD HOTCHKISS

TODD B. HOTCHKISS, ATTORNEY AT LAW, LLC

Attorney for GERALD ARCHULETA

610 Gold Avenue S.W., Suite 228

Albuquerque, New Mexico 87102

Tele. (505) 243-6776

E-mail: Todd@toddhotchkisslaw.com

CERTIFICATE OF SERVICE

I, Todd Hotchkiss, hereby certify that on February 6, 2015 I electronically filed the foregoing motion through the CM/ECF system and that through that system opposing counsel Assistant United States Attorney Tara Neda will be served with a true and accurate copy.

/s/ Todd Hotchkiss

TODD HOTCHKISS